IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-5179

LYNDA M. JENNINGS,

Appellant,

vs.

JACK C. MAHONEY, Director,
Financial Responsibility Division,
Department of Public Safety of the
State of Utah,

Appellee.

On Appeal from the Supreme Court of the
State of Utah

JURISDICTIONAL STATEMENT

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Appellee.

On Appeal From the Supreme Court of the
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JURISDICTIONAL STATEMENT

Appellant Lynda M. Jennings is a driver licensed by the State of Utah who was involved in an accident on March 16, 1970. She did not have insurance at the time that she was involved in the accident. On the 29th day of April, 1970, the appellee, acting in his capacity as Director of the Financial Responsibility Division of the State of Utah, issued an Order requiring in the alternative either the suspension of her driver's license and automobile registration or posting of security in the amount of $241.00 (Appendix B). The Order stated that if the bond was not posted, the suspension would take effect on the 14th day of May, 1970. This Order was

issued solely upon the basis of an accident report submitted by the appellant, an accident report submitted by the driver of the other automobile involved, and an accident report submitted by the investigating officer. No administrative hearing was held as there is no provision for an administrative hearing in the governing Utah law, Sections 41-12-1, et. seq., Utah Code Annotated 1953. This Order was appealed to the District Court, which pursuant to Section 41-12-2(b), Utah Code Annotated 1953, stayed its effect on May 12, 1970, until a hearing was held on this matter on May 22, 1970. At the hearing, after argument, the District Court although acknowledging that this procedure raised a question of due process (Tr. 15-17), ruled that its review would be limited to the accident reports and any other evidence submitted to the Financial Responsibility Division of the Department of Public Safety of the State of Utah. This was affirmed by the Supreme Court of the State of Utah in an Opinion filed June 14, 1971, Jennings v. Mahoney, 26 Utah 2d _____, ____ P. 2d _____. (Appendix A) This process denies the appellant due process of law in that she has not been provided with a hearing either prior to the ordering of the suspension of her driver's license or prior to the effective date of the suspension of her driver's license, and inasmuch as the hearing provided by Section 41-12-2(b), Utah Code Annotated 1953, has been interpreted by the Supreme Court of the State of Utah as not being one where evidence can be presented, where testimony can be presented, and where cross-examination may be effected, it is not a hearing such as is required by the Fifth and Fourteenth Amendments to the Constitution of the United States of America as defined by the Supreme Court of the United States in Bell v. Burson, ____ U. S. _____, 29 L. Ed. 2d 90, 39 L. W. 4607 (May 24, 1971).

This appeal is taken pursuant to the provisions of § 1257 (2) of Title 28, U. S. C. A., Schroeder v. City of New York, 371 US 208 (1962),

Standard Oil Co. of California v. Johnson, 316 US 481 (1942), Sulton Ry. & Timber Co. v. Dept. of Labor & Industries of State of Washington, 277 US 135 (1928); or in the alternative, pursuant to the provisions of § 1257 (3) of Title 28, U. S. C. A., United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n, 389 US 217 (1967).

OPINIONS BELOW

On April 29, 1970, the appellee, Jack C. Mahoney, Director of the Financial Responsibility Division of the Department of Public Safety of the State of Utah, after examining the accident reports submitted by the appellant, by the other driver, and by the investigating officer, ordered the appellant to post a bond in the sum of $241.00 or suffer the suspension of her driver's license. (Appendix B) This Order of Suspension was appealed to the District Court on May 12, 1970, and a temporary Stay was granted by the District Court until the hearing which was held on May 22, 1970. At the hearing, the District Court ruled that the hearing provided by Section 41-12-2(b), Utah Code Annotated 1953, is a summary review of the decision of the Director of the Financial Responsibility Division of the Department of Public Safety of the State of Utah and ruled that the scope of the review was limited to examination of the accident reports submitted to the Director to see if he had abused his discretion. Judgment was entered on the 8th day of June, 1970. This decision was appealed to the Supreme Court of Utah on the grounds that the hearing required by Section 41-12-2(b), Utah Code Annotated 1953, must comport with Due Process of Law. (Appendix C) The Supreme Court of the State of Utah, in an Opinion filed June 14, 1971, Jennings v. Mahoney, 26 Utah 2d ____, ____ P. 2d ____, (Appendix A), affirmed the District Court and held that the only hearing required by Section 41-12-2(b), Utah Code Annotated 1953, is a review of the accident re-

ports submitted by the parties and the investigating officers. In the course of this Opinion, the decision of the Supreme Court of the United States in Bell v. Burson, ____ U. S. _____, 29 L. Ed. 2d 90, 39 L. W. 4607 (May 24, 1971), was construed by the Supreme Court of the State of Utah as not requiring a hearing in which testimony and cross-examination was taken, either administratively or judicially.

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The jurisdiction of this Court is invoked under Section 1257(2) of Title 28, U. S. C. A., on the grounds that the failure of Section 41-12-2(b), Utah Code Annotated 1953, to provide for a hearing prior to the effective suspension of a driver's license and motor vehicle registration and the failure to provide any hearing which conforms to the requirements of Due Process of Law as enunciated in Bell v. Burson, ____ U. S. _____, 29 L. Ed. 2d 90, 39 L. W. 4607 (May 24, 1971, is a denial of Due Process of Law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States of America; or in the alternative, the jurisdiction of this Court is invoked under Section 1257(3) of Title 28, U. S. C. A., on the grounds that the decision of the Supreme Court of the State of Utah in Jennings v. Mahoney, 26 Utah 2d _____, _____ P. 2d ____ (June 14, 1971) (Appendix A), in construing Section 41-12-2(b), Utah Code Annotated 1953, is inconsistent with the decision of the Supreme Court of the United States in Bell v. Burson, ____ U. S. _____, 29 L. Ed. 2d 90, 39 L. W. 4607 (May 24, 1971). See United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n, 389 U. S. 217 (1967).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The following provisions which are the subject of this action are set out fully in Appendix D, and Appendix E, and Appendix F.

1. The United States Constitution, Fifth and Fourteenth Amendments. (Appendix E)

2. Section 41-12-2(b), Utah Code Annotated 1953. (Appendix D)

3. Sections 41-6-35 and 41-12-1, et seq., Utah Code Annotated 1953 (Appendix F).

QUESTION PRESENTED

DO THE PROVISIONS OF SECTION 41-12-2(b), UTAH CODE ANNOTATED 1953, AS CONSTRUED BY THE SUPREME COURT OF THE STATE OF UTAH, DENY DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA TO A DRIVER LICENSED BY THE STATE OF UTAH IF HE IS UNINSURED AT THE TIME HE IS INVOLVED IN AN AUTOMOBILE ACCIDENT AND THEREAFTER SUFFERS SUSPENSION OF HIS DRIVER'S LICENSE WITHOUT A HEARING, CONTRARY TO THE STANDARDS ENUNCIATED BY THE UNITED STATES SUPREME COURT IN BELL v. BURSON, ____ U. S. ____, 29 L. Ed. 2d 90, 39 L. W. 4607 (May 24, 1971).

STATEMENT OF THE CASE

Appellant Lynda M. Jennings filed on an Impecunious Affidavit a Complaint in the Third Judicial District Court in and for Salt Lake County, State of Utah, challenging an Order issued by the appellee, Jack C. Mahoney, Director of the Financial Responsibility Division of the Department of Public Safety of the State of Utah, which required in the alternative either the suspension of her driver's license and motor vehicle registration or the posting of a bond of $241.00. (Appendix B) The Order had been issued as the result of an accident which occurred on March 16, 1970. The Order was dated April 29, 1970, and

was to take effect on May 14, 1970. The issuing of this Order was based entirely upon the appellee's examination of the accident reports submitted by the appellant, the other driver involved, and the investigating officer. (Tr. 28) A hearing was held on the appellant's Complaint on May 22, 1970. At the hearing, the appellee testified briefly and the appellant, after testifying through her attorney, made a proffer of proof. Over the objection of the appellant that she had never had an opportunity for a hearing to be heard and to present her own evidence, the District Court, although acknowledging that the procedure involved raised a question of Due Process of Law, ruled that the scope of the hearing was whether or not, after examination of the accident reports and other evidence submitted to him,[1] the appellee had abused his discretion in issuing the Order of Suspension. This decision was appealed to the Supreme Court of the State of Utah, which Court held in Jennings v. Mahoney, 26 Utah 2d ____, _____ P. 2d _____ (June 14, 1971) (Appendix A), that the District Court was correct, that is, that the sole review in the District Court pursuant to the provisions of Section 41-12-2(b), Utah Code Annotated 1953, is a review of the reports submitted to the Director of the Division of Financial Responsibility of the Department of Public Safety of the State of Utah to determine whether or not he had abused his discretion when he issued his order, requiring in the alternative either the suffering of the suspension of the driver's license or the posting of a bond. Although the issue was presented to the Court (see Appendix C) that such a procedure violates the requirements of Due Process of Law in that no hearing is held in which testimony can be given, cross-examination is available, and evidence can be introduced, the decision of the United

[1] Other evidence has been interpreted by the Utah Supreme Court to mean physician's reports, garage reports, and property damage reports, Simmons v. Mahoney, 24 Utah 2d 146, 467 P. 2d 414 (1970).

States Supreme Court in Bell v. Burson, ___ U. S. ___, 29 L. Ed. 2d 90, 39 L. W. 4607 (May 24, 1971), was distinguished on the grounds that a determination had to be made as to the probability of responsibility, but that a hearing on this matter was not required (see footnote 1 and footnote 4 in Jennings v. Mahoney, Appendix A). Accordingly, as construed by the Supreme Court of the State of Utah, the statutory scheme under Section 41-12-2(b), Utah Code Annotated 1953, provides for the submission of written reports to the Director of the Financial Responsibility Division of the Department of Public Safety of the State of Utah. From these reports, the Director decides as to whether or not there is a probability of responsibility and if he decides that there is, he issues an Order requiring in the alternative either the suffering of the suspension of a driver's license by an uninsured motorist involved in an accident or the posting of a bond sufficient to cover the estimated damages. This may be appealed to the District Court, which will then examine the same reports to determine whether or not the Director abused his discretion in issuing the Order. This procedure makes no provision whatsoever for a hearing at which evidence may be introduced, testimony may be given, or cross-examination effected. This was the primary question which was raised before the Supreme Court of the State of Utah and it was presented to and rejected by both that Court and the trial court. This denial of Due Process of Law was incorporated into the laws of Utah despite the decision by the Supreme Court of the United States in Bell v. Burson, ___ U. S. ___, 29 L. Ed. 2d 90, 39 L. W. 4607 (May 24, 1971), and accordingly, the decision of the Supreme Court of the State of Utah, Jennings v. Mahoney, 26 Utah 2d ___, ___ P. 2d ___ (June 14, 1971), should be reversed.

ARGUMENT

I.

THE PROVISIONS OF SECTION 41-12-2(b), UTAH CODE ANNOTATED 1953, AS CONSTRUED BY THE SUPREME COURT OF THE STATE OF UTAH, DENY DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA TO ANY UNINSURED LICENSED UTAH DRIVER WHO IS INVOLVED IN AN AUTOMOBILE ACCIDENT, AND AS A RESULT THEREOF, SUFFERS SUSPENSION OF HIS DRIVER'S LICENSE WITHOUT A HEARING.

On March 16, 1970, appellant Lynda M. Jennings was involved in an accident in Salt Lake City, State of Utah. At that time, she was licensed to drive pursuant to the laws of the State of Utah, but did not have liability insurance. Pursuant to the provisions of the Financial Responsibility laws, Section 41-12-1, et. seq., and Section 41-6-35, Utah Code Annotated 1953, she submitted an accident report, describing the accident and the extent of her damage. This was also done by the driver of the other automobile and the officer of the Salt Lake City Police Department who investigated the accident. See Section 41-6-35, Utah Code Annotated 1953. Based on these reports, the appellee on April 29, 1970, issued an Order (Appendix B), requiring the appellant by May 14, 1970, either to post a bond in the sum of $241.00 or suffer suspension of her driver's license and motor vehicle registration. (See Section 41-12-4 and 5, Utah Code Annotated 1953). This Order was appealed to the Third Judicial District Court in and for Salt Lake County, State of Utah, on May 12, 1970, pursuant to Section 41-12-2(b), Utah Code Annotated 1953. The matter was heard on May 22, 1970, before the Honorable D. Frank Wilkins, who, while recognizing that this procedure involved questions of Due Process of Law (Tr. 15-17), ruled, after hearing testimony, argument and a proffer of proof, that the scope of the hearing was whether or not the appellee had abused

his discretion in issuing the Order. After examining the accident reports, the Court held that the appellee had not abused his discretion. This decision was appealed to the Supreme Court of the State of Utah, raising only the question of whether or not the hearing which had been held before Judge Wilkins was a hearing in accord with the requirements of Due Process of Law (see appellant's Brief, Appendix C). The pivotal point involved in the District Court and the Supreme Court was the testimony of Officer Duncan, the investigating officer for the Salt Lake City Police Department. In his accident report, he set forth events that would lead to the finding that appellant Lynda Jennings was probably responsible for the accident. In accordance with this, he had issued to Miss Jennings a citation for improperly entering traffic. However, when this matter came to trial before the City Court for Salt Lake City, Salt Lake County, State of Utah, his testimony was substantially different from his accident report statement and at the conclusion of that trial, Miss Jennings was found to be not guilty of the charges he had made against her (Tr. 30). It was contended to the Supreme Court that the essence of due process is a chance to be heard and to have an opportunity for cross-examination. It was contended that the facts in the instant matter demonstrated clearly why such a procedure is required. The events of this matter were not accurately reflected in the accident reports as submitted by the parties. This was brought out in a Due Process hearing, the Salt Lake City Court. It was contended to the Utah Supreme Court that the failure to provide this type of a hearing would constitute a denial of Due Process of Law. In an opinion dated June 14, 1971, the Supreme Court of the State of Utah affirmed the District Court, Jennings v. Mahoney, 26 Utah 2d ____, ____ P. 2d ____ (June 14, 1971), (Appendix A), and held that the review of the appellee would be limited to the accident reports and any other evidence submitted to the Depart-

ment, even though no Due Process hearing is provided at any point in these proceedings. In response to the appellant's contention, the Supreme Court stated:

> "On appeal, plaintiff asserts that she was not accorded a hearing which comported with the requirements of procedural due process as guaranteed by Section 7, Article I, Constitution of Utah, and the Fourteenth Amendment to the Constitution of the United States. There are two facets to plaintiff's argument. First, she should have been accorded a hearing prior to the order of suspension of her operator's license. Second, she urges that the review in the district court should not be confined to the written records and other evidence submitted to the department, but that she should have been granted a trial de novo wherein she would have had an opportunity to present evidence and confront and cross-examine witnesses against her." 26 Utah 2d at ____, ____ P. 2d at _____ (p. 1, Appendix A).

The Court then went on to state:

> "In regard to plaintiff's first point, the trial court, in fact, stayed the order of suspension until she was accorded a hearing; so she cannot urge reversal of the judgment of the trial court on this ground.[1]"

Then, in footnote 1, the Court stated:

> "[1] See Bell v. Burson, Supreme Court of the United States, Case #5586 (May 24, 1971), wherein the court stated that before the State may deprive a person of his driver's license and vehicle registration, it must provide a forum for the determination of the question whether there was a reasonable possibility of judgment being rendered against him as a result of the accident. However, the court deemed it inappropriate to decree the manner in which the State must filfill this requirement."

This holding of the Utah Supreme Court, while following the general outline of the language of the United States Supreme Court in Bell v. Burson, ____ U. S. ____, 29 L. Ed. 2d 90, 39 L. W. 4607 (May 24, 1971), wherein it was stated:

> "We turn then to the nature of the procedural due process which must be afforded the licensee on the question of his fault or liability for the accident. A procedural rule that may satisfy due process in one contest may not necessarily satisfy procedural due process in every case. Thus, procedures adequate to determine a welfare claim may not suffice to try a felony charge. Compare Goldberg v Kelly, 397 US, at 270-271, 25 L Ed 2d at 300, with Gideon v. Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792, 93 ALR2d 733 (1963). Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of

the question of liability. That adjudication can only be made in litigation between the parties involved in the accident. Since the only purpose of the provisions before us is to obtain security from which to pay any judgments against the licensee resulting from the accident, we hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable posibility of judgments in the amounts claimed being rendered against the licensee." ____ U. S. at _____, 29 L. Ed. 2d at 95, 39 L. W. at 4609.

ignores the holding of the Supreme Court that:

"But '[i]n reviewing state action in this area . . . we look to substance, not to bare form, to determine whether constitutional minimums have been honored.'" ____ U. S. at _____, 29 L. Ed. 2d at 95, 39 L. W. at 4609.

and

"The hearing required by the Due Process Clause must be 'meaningful,' Armstrong v. Manzo, 380 US 545, 552, 14 L Ed 2d 62, 66, 85 S Ct 1187 (1965), and 'appropriate to the nature of the case.' Mullane v Central Hanover Bank & Trust Co., supra." ____ U. S. at ____, 29 L. Ed. 2d at 96, 39 L. W. at 4609-4610.

Turning to the key issue raised in this matter, that is, whether the hearing which must be held prior to the suspension of the driver's license must be a hearing in accord with Due Process, the Supreme Court stated:

"Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without the procedural due process required by the Fourteenth Amendment. Sniadach v. Family Finance Corp., 395 US 337, 23 L Ed 2d 349, 89 S Ct 1820 (1969); Goldberg v Kelly, 397 US 254, 25 L. Ed 2d 287, 90 S Ct 1011 (1970). This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a 'right' or a 'privilege.' (citations omitted)". ____ U. S. at _____, 29 L. Ed. 2d at 94, 39 L. W. at 4609.

Accordingly, a meaningful hearing must be had and it must be held prior to the effective suspension of the driver's license because the hearing must be a prior hearing, but the Utah procedure makes no provision for an administrative hearing prior to the issuance of an Order of Suspension. The Director of the Finan-

cial Responsibility Division of the Department of Public Safety of the State of Utah examines the accident reports submitted, and then issues his order, when he deems it appropriate. This order may be stayed by the District Court until the hearing before it, but no Due Process hearing has yet been held nor offered. Yet, the Supreme Court of Utah then went on to hold:

> "Plaintiff further asserts that in the review before the district court, she was entitled to a trial de novo.
>
> Section 41-12-2(b), U. C. A. 1953, provides:
>
> > Any person aggrieved by an order or act of the commission, may, within ten days after notice thereof, file a petition in the district court for a review thereof, ... The court shall summarily hear the petition and may make any appropriate order or decree. [Emphasis added.]

In Hague v. State,[2] this court expressed a belief that the department should consider all of the facts presented in the accident reports and any other evidence submitted, and where that evidence indicated that there was a lack of culpability on the part of the driver, the department should not suspend the operator's license or automobile registration of the person involved. This court concluded:

> We are of the opinion that the legislature intended when it gave the person aggrieved the right to petition the court for a review of the actions of the department, it intended more than a mere examination of the department's orders but that as in other reviews of the actions of administrative bodies; the courts can and should determine whether the administrative body exceeded this jurisdiction, or acted capriciously.

It should be emphasized that the procedure provided under the Financial Responsibility Act is to determine whether security is required to assure financial responsibility and not to determine ultimate liability. Section 41-12-12, U. C. A. 1953, prohibits any of the reports, findings or the fact that security was filed under the act to be referred to in any way or to be evidence of the negligence or due care of either party at the trial of any action or law to recover damages.

In Orr v. Superior Court,[3] the court noted that the department should not encounter any difficulty in determining from the accident reports and other evidence submitted whether there was a reasonable possibility that a judgment might be recovered against the involved driver, based on his possible culpability. The court stated:

> The department need not decide as between conflicting versions of the accident whether the driver was in fact at fault; if there is any credible evidence on the basis of which

he could reasonably be considered culpable, such evidence, which could be believed by the trier of fact in a lawsuit, will suffice to support a determination that it is reasonably possible that a judgment may be recovered against the driver. Neither is the department called upon to make sophisticated judgments upon any claims of contributory negligence or of last clear chance, etc. which may arise; such claims commonly turn in the first instance upon determination of disputed facts, and as stated, such determinations are not the responsibility of the department. . . .

With respect to court review of a department order suspending a license, the driver alleging nonculpability is entitled to a review of the evidence submitted to the department so that the court can determine whether it supports the implied finding that there is a reasonable possibility that a judgment for damages will be rendered against the driver (and owner). [Citations.] The issue is not that indicated by the trial court in this case: whether the driver was actually without fault in the accident. Instead, the issue is only whether the evidence before the department supports its implied finding of the reasonable possibility of a judgment. Accordingly, it is appropriate to limit the scope of court review to a review of the department's action, rather than an unlimited new trial on the issue of fault. [Emphasis added.]

In the instant action the trial court did not err by refusing to litigate the ultimate question of fault and by confining its determination to a review of the administrative action based on the reports and other evidence submitted.[4] The judgment of the trial court is affirmed. No costs awarded.

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2 23 Utah 2d 299, 302, 462 P. 2d 418 (1969).

3 71 A. C. 233, 77 Cal. Rptr. 816, 454 P. 2d 712, 716-717 (1969).

4 See Bell v. Burson, note 1, supra, wherein the court stated:

". . . Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability. That adjudication can only be made in litigation between the parties involved in the accident. Since the only purpose of the provisions before us is to obtain security from which to pay any judgments against the licensee resulting from the accident, we hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee."
26 Utah 2d at ___, ___ P. 2d at ___, Appendix A at 2-3 .

Thus, the Supreme Court of the State of Utah has held that in no way under the provisions of Section 41-12-2(b), Utah Code Annotated 1953, is an uninsured motorist in the State of Utah whose driver's license has been suspended entitled to a due process hearing. The accident reports are submitted. No hearing is held prior to the issuing of an Order of Suspension and no Due Process hearing is thereafter made available. Accordingly, not only is no meaningful hearing made available prior to the suspension of driver's licenses in the State of Utah, but no meaningful hearing is provided thereafter. The Supreme Court of the State of Utah so held after consideration of the decision of the United States Supreme Court in Bell v. Burson, supra. The Supreme Court of the State of Utah chose to disregard the requirement enunciated by the United States Supreme Court that the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States requires that where a state permits inquiry into the question of probability of responsibility,[2] which Utah does, Hague v. State, 23 Utah 2d 299, 462 P.2d 418 (1969), there must be a due process hearing on the question of probability of responsibility. In the instant case, such a hearing would have produced testimony substantially different from the statements submitted in the accident reports. It is precisely for this reason that the Supreme Court of the United States stated as part of its holding in Bell v. Burson, supra, that:

> "The hearing required by the Due Process Clause must be 'meaningful,' Armstrong v. Manzo, 380 US 545, 552, 14 L Ed 2d 62, 66, 85 S Ct 1187 (1965), and 'appropriate to the nature of the case.' Mullane v Central Hanover Bank & Trust Co., supra." ___ U. S. at ____, 29 L. Ed. 2d at 96, 39 L. W. at 4609-4610.

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2 "Since the statutory scheme makes liability an important factor in the State's determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing." (emphasis added) ___ U. S. at ____, 29 L. Ed. 2d at 96, 39 L. W. at 4609.

While the United States Supreme Court held that it would not prescribe the exact hearing procedure required in Bell v. Burson, supra, it is clear this does not mean, as was held by the Supreme Court of the State of Utah, that a procedure devoid of Due Process procedure can be adopted. See Goldberg v. Kelly, 397 U.S. 254 (1970). Section 41-12-2(b), Utah Code Annotated 1953, as construed by the Supreme Court of the State of Utah does not provide such a hearing and is, therefore, unconstitutional as repugnant to the Fourteenth Amendment to the Constitution of the United States of America. Accordingly, this Court should take jurisdiction and reverse the Decision of the Supreme Court of the State of Utah in Jennings v. Mahoney, 26 Utah 2d ____, ____ P. 2d ____ (1971).

II.

THE SUPREME COURT OF THE STATE OF UTAH IN JENNINGS v. MAHONEY, 26 Utah 2d ____, ____ P. 2d ____ (1971), RENDERED A DECISION AND HOLDING THAT IS CONTRARY TO AND IN CONFLICT WITH THE HOLDING OF THE UNITED STATES SUPREME COURT IN BELL v. BURSON, ____ U.S. ____, 29 L. Ed. 2d 90, 39 L. W. 4607 (1971).

On May 24, 1971, the United States Supreme Court enunciated its decision in Bell v. Burson, ____ U. S. ____, 29 L. Ed. 2d 90, 39 L. W. 4607 (1971). After explaining the basis of the decision, the Supreme Court stated:

> "We hold, then, that under Georgia's present statutory scheme, before the State may deprive petitioner of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident. We deem it inappropriate in this case to do more than lay down this requirement. The alternative methods of compliance are several. Georgia may decide merely to include consideration of the question at the administrative hearing now provided, or it may elect to postpone such a consideration to the de novo judicial proceedings in the Superior Court. Georgia may decide to withhold suspension until adjudication of an action for damages brought by the injured party. Indeed, Georgia may elect to abandon its present scheme completely and pursue one of the various alternatives in force in other States. Finally, Georgia may reject all of the above and devise an entirely new regulatory scheme. The area of choice is wide: we hold only that the failure

> of the present Georgia scheme to afford the petitioner a prior hearing on liability of the nature we have defined denied him procedural due process in violation of the Fourteenth Amendment." ___ U. S. at _____, 29 L. Ed. 2d at 96-97, 39 L. W. at 4610.

By its decision in Jennings v. Mahoney, 26 Utah 2d ____, ____ P. 2d ____ (June 14, 1971), the Supreme Court of the State of Utah held that although Utah statutes permit inquiry into the question of probability of responsibility,[3] the sole "hearing" that will be allowed is a review of the accident reports submitted by the drivers of the vehicles involved in the accidents and the report submitted by the investigating officer. At no point in this procedure is there any opportunity to present evidence or testimony or to cross-examine any of the other people whose reports are involved. This matter was raised at the trial level and was overruled by the trial court who held that the statutory procedures established by Section 41-12-2(b), Utah Code Annotated 1953, involved a review of the accident reports submitted to the Director of the Financial Responsibility Division of the Department of Public Safety of the State of Utah and did not permit a hearing that would inquire into the facts of the situation. This was affirmed by the Supreme Court of the State of Utah in Jennings v. Mahoney, 26 Utah 2d at _____, _____ P. 2d at _____, Appendix A at 1-3 . In this decision, in two footnotes, No. 1 and No. 4, the Court referred to the decision of the United States Supreme Court in Bell v. Burson, supra, as authority for their holding. However, it is submitted that a procedure which does not permit any hearing where evidence may be presented, testimony may be taken and cross-examination may be effected is not a hearing that complies with the requirements of Due Process of Law and is not a "meaningful hearing" as was stated is required:

> "The hearing required by the Due Process Clause must be 'meaningful,' Armstrong v Manzo, 380 US 545, 552, 14 L Ed 2d 62, 66, 85 S Ct 1187 (1965), and 'appropriate to the nature of the

[3] Hague v. State, 23 Utah 2d 299, 462 P. 2d 418 (1969).

> case.' Mullane v Central Hanover Bank & Trust Co., supra. It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision whether licenses of the nature here involved shall be suspended does not meet this standard." ____ U.S. at _____, 29 L. Ed. 2d at 96, 39 L.W. at 4609-4610.

If any procedure which involves the making and effectuation of a decision before a hearing is had is a denial of Due Process of Law under the Fourteenth Amendment to the Constitution of the United States of America, Bell v. Burson, supra, Goldberg v. Kelly, 397 U.S. 254 (1970), Sniadach v. Family Finance Corp., 395 U.S. 337 (1969), certainly the establishment of a procedure which denies any hearing at all is a denial of Due Process of Law. Yet, this is the procedure established by the Supreme Court of the State of Utah, when, purportedly in conformity with Bell v. Burson, supra, it held in Jennings v. Mahoney, supra, that no Due Process hearing need be held before suspension of a driver's license by the State Financial Responsibility Division of the Department of Public Safety of the State of Utah and then that no hearing other than review of the same hearing reports may be had in the District Court.

Accordingly, the decision of the Supreme Court of the State of Utah in Jennings v. Mahoney, supra, is in conflict with the decision of the United States Supreme Court in Bell v. Burson, supra, and it should be reversed by this Court.

CONCLUSION

The question raised by this appeal is a substantial question to be considered by this Court. The statutes of the State of Utah as construed by the Supreme Court of the State of Utah constitute a procedure which is repugnant to the Constitution of the United States of America but which has been upheld by a decision of the Supreme Court of the State of Utah in the face of a contrary

decision by the United States Supreme Court. Jurisdiction should be noted and this matter should be summarily reversed and remanded or set for briefing and oral argument as the Court deems appropriate.

Dated this 27 day of July, 1971.

Respectfully Submitted,

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JENNINGS v. MAHONEY, DIRECTOR, FINANCIAL RESPONSIBILITY DIVISION, DEPARTMENT OF PUBLIC SAFETY OF UTAH

APPEAL FROM THE SUPREME COURT OF UTAH

No. 71-5179. Decided November 9, 1971

Appellant, an uninsured Utah motorist who was involved in an accident and whose license was suspended, attacks Utah's Motor Vehicle Safety Responsibility Act as not affording the procedural due process required by *Bell* v. *Burson*, 402 U. S. 535. However, although there is plainly a substantial question whether the statutory scheme on its face affords the procedural due process required by *Bell* v. *Burson*, here, where a state court stayed the suspension order pending completion of judicial review and conducted a hearing at which appellant was given an opportunity to present evidence and cross-examine witnesses, there was no denial of procedural due process.

26 Utah 2d 128, 485 P. 2d 1404, affirmed.

PER CURIAM.

Appellant, a Utah motorist, was involved in a collision. Both drivers and a police officer who investigated the accident filed accident reports with Utah's Department of Public Safety as required by the Utah Motor Vehicle Safety Responsibility Act. Without affording appellant a hearing on fault, and based solely on the contents of the accident reports, the Director of the Financial Responsibility Division determined that there was a reasonable possibility that appellant was at fault. Appellant did not carry liability insurance and was unable to post security to show financial responsibility. The Director therefore suspended her license. A Utah District Court sustained the Director and the Supreme Court of Utah affirmed. *Jennings* v. *Mahoney*, 26 Utah 2d 128, 485 P. 2d 1404 (1971).

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The proceedings were authorized under Utah Code Ann. §§ 41–12–2 (b) and 41–6–35 (1953). Appellant attacks the statutory scheme as not affording the procedural due process required by our decision in *Bell* v. *Burson*, 402 U. S. 535 (1971). We there held that the Georgia version of a motor vehicle responsibility law was constitutionally deficient for failure to afford the uninsured motorist procedural due process. We held that, although a determination that there was a reasonable possibility that the motorist was at fault in the accident sufficed, "before the State may deprive [him] of his driver's license and vehicle registration," the State must provide "a forum for the determination of the question" and a "meaningful . . . 'hearing appropriate to the nature of the case.'" *Id.*, at 541, 542. Appellant submits that Utah's statutory scheme falls short of these requirements in two respects: (1) by not requiring a stay of the Director's order pending determination of judicial review, the scheme leaves open the possibility of suspension of licenses without prior hearing; (2) in confining judicial review to whether the Director's determination is supported by the accident reports, and not affording the motorist an opportunity to offer evidence and cross-examine witnesses, the motorist is not afforded a "meaningful" hearing.

There is plainly a substantial question whether the Utah statutory scheme on its face affords the procedural due process required by *Bell* v. *Burson*. This case does not, however, require that we address that question. The District Court in fact afforded this appellant such procedural due process. That court stayed the Director's suspension order pending completion of judicial review, and conducted a hearing at which appellant was afforded the opportunity to present evidence and cross-

examine witnesses. Both appellant and the Director testified at that hearing. The testimony of the investigating police officer would also have been heard except that appellant's service of a subpoena upon him to appear was not timely under the applicable court rules.

The judgment of the Utah Supreme Court is

Affirmed.